

November 16, 1987

REPORT TO THE HONORABLE
MAYOR AND CITY COUNCIL
HARDSHIP GUIDELINES

This report is in response to an inquiry by several Councilmembers as to whether "hardship" factors can be developed to assist in evaluating variances from the Interim Development Ordinance ("IDO").

California has not developed a body of law enunciating factors relating to hardship as applicable to the IDO, however, there is substantial case law on the granting of zoning variances. Because of the similarity with zoning variances the factors listed below represent adaptations from that body of law.

These factors are offered as guidelines and are not meant to be rigidly adhered to or limit the City Council's discretion.

Suggested hardship factors:

1. Compliance with statutory criteria (i.e., IDO - Vesting Tentative Map Requirements).
2. The claimed hardship must directly impact on the IDO, be peculiar to the IDO.
3. Granting of the variance will not result in material damage or prejudice to other property in the vicinity, not be detrimental to the public health, safety or general welfare.
4. Size of development.
5. Evidence of loan commitment as an indicia of readiness to proceed.
6. Location of the development with relationship to population density, traffic congestion, environmentally sensitive areas.
7. Prior variance requests and variances granted.
8. Purpose and use of proposed units.

The IDO Administrator uses the following criteria suggested by the Planning Department in its project analysis:

1. Availability of community allocation from Schedule A of Resolution R-269095.
2. Consistency with adopted Community Plan or Progress Guide and General Plan.
3. Consistency with revisions to pending community plan or rough draft.
4. Completes a project already partially developed.

5. Lies within community exceeding .95 of facilities availability factor and contributes to increasing public facilities.
6. Complies with zoning and any overlay zones.
7. Pipeline case, applied for a building permit application between April 29 and June 22, 1987.
8. Providing special beneficial extraordinary public improvement and is contributing toward private financing of public facilities.
9. Discretionary approval or permit previously obtained.
10. Landscaping plans meet Citywide standard.

Although cases vary as to what specific factors are applicable to any given scenario, there is an underlying premise upon which courts have agreed. To declare that a hardship exists, the degree of hardship must be very high. In other words, the evidence of hardship must, on balance, clearly outweigh the policy and purposes of the IDO.

Respectfully submitted,
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